

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**COMMENTS OF
THE WYOMING OFFICE OF CONSUMER ADVOCATE**

(Submitted March 27, 2006)

Introduction and Background

The Wyoming Office of Consumer Advocate (Wyoming OCA) hereby offers its comments on the Federal Communications Commission's (Commission's) Notice of Proposed Rulemaking (NPRM) seeking comment on how to construct a universal service mechanism that meets Congress' desire to both preserve and advance universal service, as well as all other factors that Congress identified within the Telecommunications Act of 1996 (1996 Act).

The Wyoming OCA is an interested party in this proceeding. We are charged with representing the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. In light of our statutory charge, we are interested in a mechanism(s) that would finally

allow for the kind of support anticipated by the Commission's questions in this proceeding, including:

- Support that allows for quality services at just, reasonable and affordable rates;
- Support that is predictable and sufficient through the partnership of federal and state jurisdictional actions;
- Support that will be flexible enough to recognize changes in the market but predictable enough to offer providers, and customers, reasonable surety of assistance necessary to maintain ubiquitous availability of basic telephony services throughout our nation; and
- Support that recognizes the competitiveness of some, but not all, telecommunications services and service areas -- and attempts to protect a competitive environment, but not competitors themselves.

It will not be an easy task to find such a mechanism, but finding a solution that incorporates each of the above points is critical -- particularly to rural, low-density states such as Wyoming. We -- federal regulators, state regulators, and industry -- must work with one goal in mind: to assure that high-quality, affordable telecommunications service is available to each and every person in America. Only after the recognition of the importance of this overriding principle can the questions in the NPRM be answered.

- The question of whether a cost-based or rate-based mechanism only matters relative to whether it results in enough support to keep customers' rates affordable, and comparable between rural and urban areas.
- The question of whether competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) should have the same formula applied, or the same dollar amount of

support per customer, should be answered only after consideration of how customers may be impacted.

- The question of whether quality of service standards should be part of the universal service funding formula should be answered only by examining whether the mechanism provides sufficient and predictable funding, as well as the appropriate incentives, for carriers to upgrade and expand their networks to meet customers' expectations of what constitutes basic telecommunications services.

The Wyoming Story – Again

It is with some apprehension that we once again tell the Wyoming story. Many of the readers of these comments have heard it all before. Yet, it is important that we put our comments in context for those who have not yet heard our tale of woe – and our plea. And, as you read about our history, our actions, and the impact on customers, we ask that you think about the support *for customers* that should come from a once-again reformulated non-rural, high-cost mechanism.

Wyoming is a state with a small population and a low population density. According to 2003 data, Wyoming's population is just over 501,000 people (about 0.2% of the total population of the United States) with a total area of 97,813 square miles, yielding a population density of just over 5 persons per square mile.¹ Overall, the Wyoming population is of average

¹ Only Alaska has a lower population density. Based on 2000 census data, the average population density in the United States is about 80 persons per square mile of land area.

income, with some pockets of wealthier and some pockets of poorer households.²

Wyoming is a predominantly rural state with a small and widely dispersed population, few urban centers and some of the most physically difficult-to-serve territory in the United States.³ Qwest, Wyoming's largest incumbent and only non-rural incumbent carrier, serves about 75% of all customers in Wyoming, including customers in much of rural Wyoming. The average density factor for Qwest's Wyoming area is significantly lower than that for Qwest's territory in the surrounding states. Qwest's Wyoming density factor (i.e., lines per square mile) for 2004 was 6 compared to 15 for South Dakota, 17 for Montana, 23 for Nebraska, 52 for Colorado, and 156 for Utah.

Much of the cost of traditional wireline telephone service is driven by distance and density, especially relative to the cost of the local loop. As of 2003, the average loop length of Qwest's Wyoming local loop facilities was 19,078 feet. About 9 percent of Qwest's loops, serving its most rural areas, averaged 84,575 feet in length.⁴

Yet, in spite of these challenges of distance and density, unlike most (if not all) of the other states, Wyoming has fully prepared its local exchange

² Based on 2002-2003 data, Wyoming's average median household income was about \$41,614 compared to with the U.S. average of \$43,349. Wyoming's 2002 per capita personal income was about \$31,021 compared to a U.S. average of \$30,906.

³ Eight of Wyoming's twenty-three counties have fewer than 10,000 people. Niobrara County, with less than 3,000 people, is 1.7 times the geographic area of Rhode Island and has a population density of less than one person per square mile.

⁴ As of December, 2004, Qwest served about 225,000 retail access lines in Wyoming. About 81% of these are inside the base rate area and have an average loop length of 9,962 feet; 5 % of the loops are in Zone One with an average loop length of 24,982 feet; 5% are in Zone Two with an average loop length of about 33,798 feet, and 9% are in Zone three with an average loop length of 84,575 feet.

markets for competition. Between 1995 and 1999, Qwest, with the approval of the Wyoming Public Service Commission (Wyoming PSC) and at the direction of the Wyoming legislature, transformed its rates from traditional, implicit subsidy-laden rates to cost-based rates supported, when necessary, by explicit subsidies.

- Local prices met or exceeded total service long-run incremental cost (TSLRIC),⁵ there was no longer a price differential between local business and local residential customers, all of the intrastate portion of the local loop is assigned to the cost of basic local exchange service, and retail prices were deaveraged into four pricing zones to reflect distance and density cost differences. The result of this work to ready the Wyoming market for competition were retail prices ranging from \$23.10 for the most dense service zones (e.g., the base rate area) to rates exceeding \$69 for the most rural areas (pricing zone three).
- Toll rates were deregulated, based on a finding of a competitive market, and switched access prices were decreased to less than 1.5 cents per minute.⁶

Wyoming has also successfully implemented an explicit universal service funding mechanism. It provides support directly to customers and is designed so that no customer is required to pay more than 130% of the statewide weighted average local exchange rate, excluding taxes and surcharges, for basic local service.⁷ In 2004-2005, the Wyoming universal

⁵ The pricing at or above TSLRIC was required by Wyoming statute under the assumption that if the revenue from each service exceeded its long-run incremental cost, subsidies would be removed, thus setting the framework for a competition-ready environment.

⁶ In 1995, Qwest's average intrastate toll rate was more than 20 cents per minute, compared with some current rate plans offering toll at less than 5 cents per minute. In 1995, Qwest's average intrastate switched access rate was nearly 10 cents per minute compared to the current rate of less than 1.5 cents per minute.

⁷ For July 2005-June 2005, the Wyoming statewide weighted average rate, excluding taxes, surcharges, and the Subscriber Line Charge (SLC), was \$24.36, making the threshold for

service fund distributed about \$3.7 million with Qwest receiving about \$2.5 million of that support.⁸

Wyoming has taken the transitional pricing steps necessary to move from monopoly markets to competitive markets, recognizing that competition was a goal of both the 1996 Act and the Wyoming Telecommunications Act of 1995. Yet, Wyoming customers are bearing the burden of this transition without the assistance that was expected from the federal-state partnership as anticipated by the 1996 Act.⁹ These competitive policies have impacted real customers in ways that were not anticipated at the time the Wyoming actions were taken.

receiving support from the Wyoming fund \$31.67 per month. We estimate that taxes, surcharges, and SLC add approximately another \$10 per month to the overall price of basic service.

⁸When the \$2.5 million of Wyoming universal service fund support for Qwest is divided by the total number of basic local exchange access lines in Wyoming, the result is an average of about \$0.83 per month per access line. When the amount of federal universal service support provided to Qwest in Wyoming is divided by the number of national subscribers the result is far less than one penny per month per line.

⁹ The federal-state partnership is anticipated in several early universal service fund documents including the Commission's May 8, 1997 Order (CC Docket No. 96-45), Paragraph 272, which states:

...competition will not arrive in all places at the same time, so the approach we adopt today will allow the Commission to work with the states, both collectively and individually, to ensure that states are able to accomplish their own transition from implicit support to explicit universal service support. Again, the Commission, working with the Joint Board, will continue to monitor universal service support needs as states implement explicit intrastate universal service support mechanisms, and will assess with the assistance of the state commissions whether additional federal universal service support is necessary to ensure that quality services remain "available at just, reasonable and affordable rates."

Similar expectations are raised by the Commission's language in FCC Order released May 28, 1999 in CC Docket No. 96-45 at Paragraph 57:

...Federal mechanisms, in contrast, will assure that these goals are met nationally by providing support to those states where the cost of providing the supported services substantially exceed the national average. We find that the appropriate balance of responsibility for enabling reasonably comparable local rates can be struck through the methodology recommended by the Joint Board...

We restate this history in the context of the generic rulemaking to emphasize the fact that policies impact rates. Real people are now paying rates that are not comparable to those of their friends and relatives in neighboring states because the non-rural universal service funding has failed to meet the Congressionally mandated principles of the 1996 Act.¹⁰ The mechanism that results from this NPRM must address this issue once and for all. We have waited too long for the help that we anticipated would come with the transition from monopoly to competitive markets.

As new principles and a new mechanism are devised, we urge the Commission to test its effectiveness against the Wyoming circumstances. Will whatever comes from this proceeding finally allow Wyoming customers the chance to benefit from competition while still paying affordable rates that are reasonably comparable to the rates paid in other areas of our vast nation? Unless the answer is a resounding yes, the mechanism has not yet met its Congressionally mandated goals.

Defining Sufficiency

The NPRM seeks comment on how the Commission should define the term *sufficiency* for purposes of a high-cost support mechanism applicable to non-rural carriers. The comment is solicited in response to the U. S. Court of Appeals for the Tenth Circuit in *Qwest Corp. v. FCC* (Qwest II), where the Court held that the Commission had failed to reasonably define *sufficient*. At the time of the Court's decision, the Commission defined the term sufficient as "enough federal support to enable states to achieve reasonable

¹⁰ For more details, see *Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier*, CC Docket No. 96-45, Submitted December 21, 2004.

comparability of rural and urban rates in high-cost areas served by non-rural carriers.” On remand, the Tenth Circuit directed the Commission to reassess its definition of *sufficient* in a manner that would consider a wider range of principles found in Section 254 of the 1996 Act, rather than only incorporating the principle of comparability of rural and urban rates.

The Wyoming OCA sees nothing wrong with defining sufficiency relative to the achievement of reasonable comparability of rates, as had been done in the past, as long as the Commission also provides some assurance that the other goals of the 1996 Act are being achieved. Thus, using an absurd example, if the support were provided at a level such that everyone in the nation paid between \$70 and \$75 for basic local voice services, it would be easy to argue that the fund was *sufficient* to support *reasonably comparable* rates between rural and urban areas. However, other principles of the 1996 Act would not have been met – specifically, the principle of affordability. More realistically, if this example were scaled down with all rates being between \$20 and \$25, then the fund would be sufficient, rates would be comparable, and rates would be affordable, just, and reasonable. With the inclusion of some way of assuring that services meet a specific quality threshold, the Commission would have met the directive of the Tenth Circuit to more fully examine the additional principles of Section 254 of the 1996 Act. Those principles tend to compliment each other rather than conflict.

How does the Commission find the rate range at which the principles tend to all complement rather than be part of an absurd reasonably comparable but not affordable example? The National Association of State Utility Consumer Advocates (NASUCA) offers a great deal of data in its comments that the Commission should find useful in responding to this question. At this time, we are not offering a specific formula nor are we offering a specific threshold for determining the point at which support should be distributed. However, based on our discussions with customers,

years of experience of reviewing cost data, and a general knowledge of nationwide rates, it is our belief that if customers are paying more than \$25 or \$30 for plain dial tone (before taxes and surcharges), it is too much. It would be difficult for us to comprehend, or to explain to customers, how rates that exceed this level today could pass the urban/rural comparability test, given the limited amount of rate rebalancing that has occurred nationwide.

How do the Commission's added principle of competitive neutrality and its earlier decision to mandate portability fit into this mechanism? The Wyoming OCA agrees with NASUCA that the Commission's process of rethinking the support mechanism(s) for the non-rural incumbent carriers should not be overly constrained by the notion of competitive neutrality. We further agree with NASUCA that competitive neutrality is very much in the eye of the competitor, and that most view a matter as not being competitive whenever it disadvantages them or favors the competitor.

As we stated earlier, our preference would be for the Commission to judge the competitive impact of its rulemaking in terms of customers, rather than the impact on individual carriers or types of carriers. For example, it is unclear to us whether there are any substantial differences in the type, amount, or price of competitive services offered in areas where a competitive eligible telecommunications carrier (CETC) is currently receiving funding versus the areas where they are not. If a CETC is able to offer the same services at the same price, whether or not federal universal service funding is being received, how is the end user possibly benefited by the distribution to the CETC? For that matter, how is competition benefited by the funding

distributed to the CETC? Until and unless competitors can show that either the competitiveness of the market itself will be diminished without levels of high-cost support to the high-cost incumbent providers or that customers will be harmed (e.g., through high prices or less customer choice), the Commission should reassess the propriety of continuing its policy of per customer support portability.

If the Commission decides to continue to provide support to the CETCs in a manner similar to that currently in place (i.e., per dollar per customer portability), one change could still be made that would provide customers a direct benefit. Carriers (both incumbents and competitors) could be required take steps to assure that customers receive a direct benefit from the federal support that is provided. As NASUCA explains as part of one of its alternatives for assuring that rates will be reasonably comparable:

...The federal fund will have provided enough support to allow rates that were not reasonably comparable to become reasonably comparable. It would be up to each state to ensure that the support is actually used to lower rates in the high-cost wire centers; a certification that this has resulted should be part of the annual state certification required by the Commission. [Footnote omitted.] Alternatively, the Commission could simply directly require that this high-cost support – specifically designed to produce reasonably comparable rural rates – is actually and immediately used for that purpose.

While the NASUCA comments are not specifically focused on CETCs, we see no reason to differentiate CETCs from incumbent carriers in this regard. This concept is already used in Wyoming. Any support that is provided by the state universal service fund is to be shown as a bill credit on end users' bills. Thus, customers not only see the amount that they pay into the state fund as a line item on the bill, but they are informed as the amount

of support that they are receiving from the fund. While not required, several carriers have chosen to also pass along their federal receipts as a line-item bill credit on customers' bills. This assures that customers – not carriers or carriers' shareholders – benefit from the federal support.

We are intrigued by NASUCA's suggestion that the non-rural high-cost mechanism include an incentive for non-rural carriers to provide access to advanced services in both the urban and rural portions of their service areas. The NASUCA suggestion is in response to the Tenth Circuits' directive that the Commission look at all of the Congressional principles set forth in Section 254, and not only those related to reasonable comparability. NASUCA's suggestion is made to incorporate the principle articulated in Section 254(b)(2), "Access to advanced telecommunications and information services should be provided in all regions of the Nation." Pursuant to NASUCA's recommendation, support to carriers would be reduced on every line that does not meet the broadband quality of service requirement.

We are supportive of the concept of expanding broadband access throughout the nation, and particularly in a geographically challenging state such as Wyoming. Yet, we would like a careful vetting of the proposal before implementation, due to our concern that there could be unintended consequences. For example, we have not yet been able to reassure ourselves that the incentive to advance the broadband cause may not in fact harm the cause of customers who currently only want or are only able to receive plain-old-telephone service (POTS). Take the case of a customer living in a high-cost, high-rate area who is only able to receive POTS – whether or not there is a desire for more advanced services. Cutting the support to the carrier serving this area may only result in a higher rate for POTS rather than the

additional deployment of advanced services. But, our concern may be more specific to Wyoming, where both urban and rural rates of the non-rural carrier are supported by cost and have been deaveraged. If it is a Wyoming problem, the answer might be to implement the NASUCA suggestion, along with implementing a real opportunity for states to seek funding related to their unique circumstances. In either case, we encourage a serious discussion about NASUCA's suggestion for improving access to advanced services throughout the United States.

Our bottom line on sufficiency is that whatever the objective formula or model results determine is needed to meet the comparability test, keep rates affordable, and to continue and advance the provision of quality services, should be funded. **The comparability test must not be sized to meet some pre-determined overall funding limitation.** Furthermore, if assuring that the fund is sufficient to meet all of the Congressional mandates incorporates a provision for special funding for special circumstances, then that provision too must be funded. And, that special provision must actually allow a decision on those special circumstances, and the associated distribution of funds, within a reasonable length of time.

Defining Reasonably Comparable

The NPRM also seeks comment on how the Commission should define the phrase *reasonable comparability* as it is used in Section 254(b)(3) of the 1996 Act. Again, the solicitation of comments results from the Tenth Circuit remand of the current definition that sets forth that a defined service area's

cost is deemed to be reasonably comparable if it is equal to or below an established national urban rate benchmark plus two standard deviations. The Tenth Circuit found that this definition was determined without supporting evidence tying the Commission's modeled cost results to the rate benchmark that then would determine if federal high-cost support would be made available. Additionally, the Tenth Circuit directed the Commission to take into consideration both the preservation and advancement of universal service.

The Wyoming OCA is not offering a specific benchmark or formula relative to defining *reasonable comparability*. However, we do have some comments about certain aspects of how to compute the urban rates to which rural rates are compared. Wyoming has two cities that qualify as urban areas, although each has a population of only slightly more than 50,000. Other than these two smaller cities, Wyomingites' communities of interest are: Salt Lake City, Utah; Denver, Colorado; Billings, Montana; Rapid City, South Dakota, and Scottsbluff, Nebraska. We offer this comment in light of the question of whether rural rates should be reasonably comparable to the urban rates within a state, or whether the comparison should be on a wider regional or even national basis. If the comparability is confined within a state's borders, then Wyoming will be disadvantaged in terms of costs and rates, compared to another state that has one or more major metropolitan areas against which to measure its rural rates.

The Commission also seeks input regarding whether comparability should consider just local rates, or if it should consider a broader package of services (e.g., a typical customer's total telecommunications bill). We see merit in the concept of comparing more than just the cost (or revenue) of local services, especially in light of NASUCA's arguments (and our own

experience) that the build-out contained in the cost model allows for much more than just the provision of local services.

Yet, there are unanswered questions that must be studied before our comfort level would allow us to actively support the use of the total revenue concept for comparability purposes. For instance, what about the customer who only wants local dial-tone service? Will that person receive enough support to keep unpackaged local rates comparable and affordable if the computation for support assumes more average customer revenue than that person provides? In addition, by including a wider array of revenues in the computation, has the Commission implicitly expanded the list of supported universal services without explicitly determining whether those services meet the Section 254(c)(1) test of determining that the new services are being subscribed to by a substantial majority of residential customers, are essential to education, public health, or public safety, and more?

The NPRM seeks comment on the relationship between comparability and affordability. As we discussed above, comparability and affordability should compliment each other rather than be in conflict. That begs the question of how affordability should be defined, an area for which the Commission also solicits comment. We agree with NASUCA that if affordability were to be defined in terms of income, rates are not likely to pass the comparability test in high-income rural areas. We also agree with NASUCA that failure to support service in high-median-income areas will disadvantage many consumers in that area with incomes below the median.

We wonder if there is another way to look at affordability that is not tied so directly to the measurement of the income of an individual or a service area. Twice – once in 1997 and again in 2001 – the Wyoming PSC undertook affordability surveys regarding customers' perceptions of local exchange

rates. While the results of the surveys were subject to interpretation and the proverbial grain-of-salt, they were instructive into a general sense of customers' thinking. The surveys provided a clear indication that, at the time, prices above the high \$20s or low \$30s were deemed by customers to be outside of a reasonable price range for landline service. This information was helpful in discussing with legislators and regulators the general perception of customers.

Similar information could be useful for the current process, and could perhaps be helpful when determining a reasonable range for setting the benchmark over which either rates or costs were deemed to need support. At a minimum, customers' perceptions of the affordability of basic services could validate or invalidate a benchmark that was derived from more formulistic or objective methods.

This type of customer provided information could also be when determining the merits of cases that are deemed to be exceptional. For example, the Commission should consider including in its rules the opportunity for a state to plead its case for additional funding. This type of exceptional opportunity was allowed in the Commission's October 27, 2003, *Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order* in CC Docket No. 96-45, FCC 03-249.¹¹

The Wyoming OCA strongly believes that customer perceptions are one important input, although not the only necessary input, in the process of determining rate affordability. However, we are not convinced that surveys and questionnaires are necessarily the best, or only, way of obtaining that input. Perhaps similar information could be obtained by looking at some of

¹¹ NASUCA also proposes the extension of the opportunity for a showing of extraordinary circumstances in its comments.

the key statistics already gathered by the Commission or the state regulators. These might include subscribership rates, complaint ratios, or even legislatively mandated or industry-agreed-to price caps.

Rate-Based or Cost-Based Mechanism

The Wyoming OCA is not conceptually opposed to a forward-looking cost-based model for use in computing the level of support to be given non-rural carriers serving high-cost areas. But, we strongly agree with NASUCA that there is a desperate need to update and improve the FCC's forward-looking, high-cost support model (Synthesis Model). We agree with NASUCA's suggestions of starting points for updating and improving the model, particularly focusing on line count updates and the more accurate mapping of customer locations.

In fact, we tend to prefer a cost-based model rather than a rate-based model given the limited authority that many regulators have over rate-setting. More and more, rates are no longer set based on a cost of service model, or even an incremental costing model, but instead, are based on marketing strategies and responses to real or perceived competition. While historically rates were subject to more oversight, in the future, we see more opportunity for rate changes in order to maximize federal support. It is in this light, in spite of the unanswered questions discussed earlier in our comments, that we prefer the NASUCA approach of comparing revenues rather than the idea of simply comparing rates. We are particularly concerned about any approach that would allow a provider to deaverage rates in an extreme way (e.g., \$20 in the town with a population of a few thousand and

\$400 in the next town with a population of a few hundred or less)¹² in order to maximize federal funds.

We also ask the Commission to consider how any new mechanism would treat states or providers who chose to “do the right thing” in terms of transitioning rates several years ago versus the treatment of carriers who would only now be facing the task of moving from implicit to explicit subsidies. We have heard of some proposals that would compensate the carriers or states who might now transition rates to eliminate implicit subsidies. Yet, we are uncertain as to whether these same plans would compensate, in an equal manner, those of us who made the transition decision more than a decade ago.

We applaud the Commission for the broad range of topics and wide-ranging specific questions that it included in its NRPM. We are encouraged that the Commission is truly willing to re-examine past decisions to meet the mandates of the Tenth Circuit. As it looks at the big picture, we urge the Commission to consider the impact of its policies on a sparsely populated but progressive thinking state such as Wyoming. And, as always, we look forward to the opportunity to work in partnership with the Commission as we face the challenges of delicately balancing the needs of individual states, customers, and providers.

Respectfully Submitted,

¹² This example is very similar to a proposal of one of Wyoming’s incumbent carriers that was suggested several years ago.

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